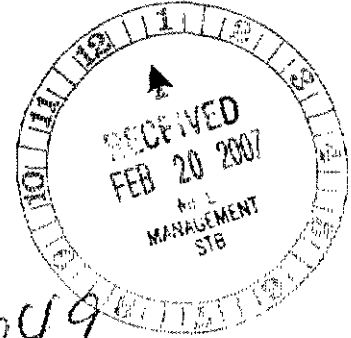


ANDREA C. FERSTER  
LAW OFFICES  
1100 SEVENTEENTH STREET, N.W., 10TH FL.  
WASHINGTON, D.C. 20036  
TEL.(202) 974-5142 FAX (202) 331-9680  
[AFERSTER@RAILSTOTRAILS.ORG](mailto:AFERSTER@RAILSTOTRAILS.ORG)



February 20, 2007

Mr. Vernon Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 713  
Washington, D.C. 20036

Re: Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX, Docket No. AB-3 (Sub-No 137X)

Dear Mr. Williams:

Enclosed please find an original and ten copies of a Joint Motion of Rails to Trails Conservancy ("RTC") and the cities of Avery, Annona, and Clarksville in Red River County, Texas for Substitution of New Railbanker/Interim Trail Manager regarding the above-referenced docket, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d), along with Statements of Willingness filed on behalf of the three cities in Red River County. Upon the effective date of this substitution, RTC will no longer be the interim trail user for any portion of the above-referenced line, as Bowie County was previously substituted for RTC for the 19.5-mile portion of the corridor in Bowie County.

If you have any questions or need any additional information, please do not hesitate to contact me, at (202) 974-5142.

Very truly yours,

Andrea C. Ferster, General Counsel  
Rails-to-Trails Conservancy

Enc.

cc: Gaberiel S. Meyer, Union Pacific Railroad

ENTERED  
Office of Proceedings

FEB 20 2007

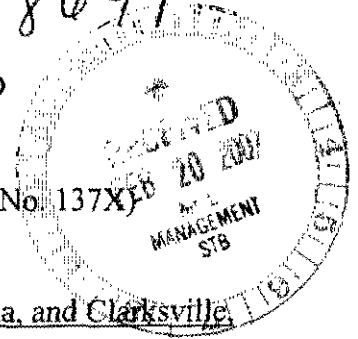
Part of  
Public Record

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Part of  
Public Record  
BEFORE THE SURFACE TRANSPORTATION BOARD

Missouri Pacific Railroad Company )  
-- Abandonment Exemption -- )  
in Red River and Bowie Counties, TX )

) Docket No. AB-3 (Sub-No. 137X)



Joint Motion of Rails to Trails Conservancy, and the Cities of Avery, Annona, and Clarksville,  
Texas, for Substitution of New Railbanker/Interim Trail Manager

Introduction

Pursuant to 49 C.F.R. § 1152.29(f), the Rails-to-Trails Conservancy ("RTC") and the Cities of Avery, Annona, and Clarksville, Texas, in Red River County, Texas, submit this joint motion to the Surface Transportation Board ("STB") requesting that the three cities be substituted for RTC as the interim trail manager for the portions of the rail line in the above-captioned proceeding that are within their respective jurisdictions, as set forth in the attached statements of willingness. Upon the granting of this motion, RTC will no longer be the interim trail manager for any portion of the 38-5 mile corridor that was the subject of the initial Notice of Interim Trail Use ("NITU") served on February 14, 1997 in the above-captioned proceeding, as Bowie County was previously substituted for RTC for the portion of the rail corridor between M.P. 23.00 (Engineering Station 1214 + 40) at New Boston, in Bowie County, TX to M.P. 42.59, at the Red River County line, a distance of approximately 19.59 miles. This motion has the consent of Union Pacific Railroad Corporation ("UP") (See Letter attached as Exhibit A).

Background

By decision served February 14, 1997, the Rails to Trails Conservancy (RTC) was recognized as the negotiating party, under the National Trails System Act, 16 U.S.C. § 1247(d), to negotiate with UP for the use of the subject right-of-way, which extends from M.P. 23 at New Boston in Bowie County, Texas, to the end of the track at milepost 61.5 near Clarksville, in Red

River County, Texas, a distance of approximately 38.5 miles, pursuant to Section 8(d) of the National Trails Systems Act, 16 U.S.C. § 1247(d) (Trails Act).<sup>1</sup> A copy of this NITU is attached as Exhibit B.

RTC subsequently filed a joint motion with Bowie County, Texas, seeking to substitute Bowie County as trail manager for that portion of the right-of-way from milepost 23.0 to milepost 42.59 at the Red River County line, including all bridges and ballast, a distance of approximately 19.59 miles. By decision served on July 1, 2005, the STB issued a substitute NITU for the of the right-of-way from milepost 23.0 to milepost 42.59 in Bowie County, a copy of which is attached hereto as Exhibit C.

#### Discussion

RTC and the Cities of Avery, Annona, and Clarksville have now entered into an agreement to transfer to each of the three cities ownership of and management responsibility for a portion of the above rail line within their respective city limits including all bridges and ballast, from MP 42.59 to MP 61.5, for a total distance of 18.91 miles, under section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d). Specifically, the agreement with the City of Avery transfers to Avery the portion of the line extending from Engineering Station 2249+00) at the Red River County/Bowie County line, to Engineering Station 2587+20, in Red River County, TX, a distance of approximately six (6) miles; the agreement with the City of Annona transfers to Annona the portion of the line in Red River County extending from Engineering Station 2587+20 to Engineering Station 2956+80) in Red River County, TX, a distance of approximately six (6)

---

<sup>1</sup> See Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX, Docket No. AB-3 (Sub-No 137X), served February 14, 1997.

miles. The agreement with the City of Clarksville transfers to Clarksville the portion of the line extending from Engineering Station 2956+80 to Engineering Station 3484+80) in Red River County, TX, a distance of approximately eight (8) miles. Each of the Cities is a political subdivision organized under the laws of Texas. Under each of their agreements with RTC, the Cities agreed to use the corridor "for public, trail and recreation uses, consistent with the National Trails System Act, as amended, 16 U.S.C. section 1247(d), the Trail Use Certificate imposed by the Surface Transportation Board ("STB") in STB Docket No AB-3 (Sub No. 137X), and subject to the Trail Use Conditions imposed by the STB , and applicable STB regulations."

Each of the Cities has further agreed "to undertake all obligations presently assumed by RTC in its capacity as a 'trail manager' within the meaning of the National Trails System Act, the Trail Use Certificate, and applicable STB regulations." A copy of each of the Cities' "statement of willingness" to serve as interim trail manager is attached as Exhibit D. Accordingly, RTC now wishes to terminate its trail use of the remaining portion of the corridor in Red River County, and each of the Cities wishes to substitute for RTC as the interim trail use manager of their respective portions of the corridor, and the parties jointly request the issuance of an appropriate order by this Board substituting the Cities for RTC as interim trail manager for the line of their respective portions of the corridor.

Since the issuance of the NITU, RTC has maintained the line for interim trail use, and, apart from the contract to the three cities and the portion previously conveyed to Bowie County, has not sold, or offered for sale, any parcels of land that would interfere with interim trail use/railbanking of the Red River County portion of the line covered by the NITU. Accordingly, the Board retains jurisdiction to substitute the Cities of Avery, Annona and Clarksville, Texas for

RTC as interim trail managers of the portions of the line in their respective jurisdictions.

Conclusion

RTC and the Cities of Avery, Annona, and Clarksville jointly request that STB: (1) reopen the proceeding in AB-3 (Sub-No. 137X); (2) vacate the existing order that recognizes RTC as the interim trail manager for the line; and (3) issue a replacement order stating that the City of Avery is now the railbanker/interim trail manager for that portion of the line extending from Engineering Station 2249+00) at the Red River County/Bowie County line, to Engineering Station 2587+20, in Red River County, TX, a distance of approximately six (6) miles; that the City of Annona is now the railbanker/interim trail manager for that portion of the line in Red River County extending from Engineering Station 2587+20 to Engineering Station 2956+80) in Red River County, TX, a distance of approximately six (6) miles; and that the City of Clarksville is now the railbanker/interim trail manager for that portion of the line extending from Engineering Station 2956+80 to Engineering Station 3484+80) in Red River County, TX, a distance of approximately eight (8) miles. The Cities and RTC also request that the replacement order naming each of the Cities as the substitute interim trail manager for their respective portions of the line be effective as of date the new order is issued.

Respectfully submitted,



Andrea C. Ferster, General Counsel  
Rails-to-Trails Conservancy  
1100 17th Street, N.W., 10th Fl.  
Washington, D.C. 20036  
(202) 974-5142

On behalf of Rails-to-Trails Conservancy

Dan Meehan

Dan Meehan  
Attorney at Law  
202 West Madison  
Clarksville, Texas 75426  
(903) 427-4547

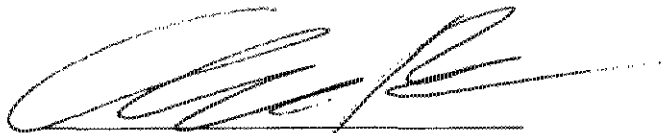
On behalf of: the Cities of Avery, Annona, and  
Clarksville, Texas

February 20, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20 day of February 2007, I have served a true and accurate copy of the foregoing motion on the following party by first-class mail, postage pre-paid:

Gabe Meyer  
General Commerce Council  
Union Pacific Railroad  
1400 Douglas Street, STOP 1580  
Omaha, NE 68179



Andrea C. Ferster

## Exhibit A



Gabriel S. Meyer  
Assistant General Attorney

February 20, 2007

**Via E Filing**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001

**Re: Docket No. AB-3 (Sub-No. 137X); Missouri Pacific Railroad Company –  
Abandonment Exemption – In Red River and Bowie Counties, TX**

Dear Secretary Williams:

This refers to the "Joint Motion of Rails to Trails Conservancy and the Cities of Avery, Annona, and Clarksville, Texas, for Substitution of New Railbanker/Interim Trail Manager" ("Joint Motion") filed in the above-referenced proceeding.

Union Pacific Railroad Company ("UP") is the successor in interest to the Missouri Pacific Railroad Company, the railroad involved in this proceeding. This letter is to advise that UP consents to the substitution of the cities of Avery, Annona, and Clarksville, TX as Railbanker/Interim Trail Managers for the portion of the above rail corridor extending from MP 42.59 (Engineering Station 2249+00) to MP 61.5 (Engineering Station 3484+80), as proposed in the Joint Motion.

Sincerely,



CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on the persons listed below by First Class, United States Mail:

Andrea C. Ferster  
General Counsel  
Rails to Trails Conservancy  
1100 17<sup>th</sup> Street, N.W., 10<sup>th</sup> Floor  
Washington, D.C. 20036

Mayor William Trimn  
City of Avery  
PO Box 35  
415 South Austin Street  
Avery, TX 75553

Mayor George English  
City of Annona  
101 Main Street  
Annona, TX 75550

Mayor Ann Lusking  
City of Clarksville  
800 West Main  
Clarksville, TX 75426

Dated at Omaha, Nebraska this 20th day of February, 2007.

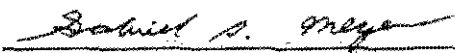
  
\_\_\_\_\_  
Gabriel S. Meyer

Exhibit B

SERVICE DATE - FEBRUARY 14, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT EXEMPTION--  
IN RED RIVER AND BOWIE COUNTIES, TX

Decided: February 11, 1997

By decision served and published in the Federal Register (61 FR 66748) on December 18, 1996, the Missouri Pacific Railroad Company (MP) was granted as exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a railroad line extending from milepost 23.0 at New Boston, to the end of the track at milepost 61.5 near Clarksville, in Red River and Bowie Counties, TX.<sup>1</sup> The exemption became effective on January 17, 1997.

On December 30, 1996, Rails to Trails Conservancy (RTC) filed a timely request for issuance of a notice of interim trail use (NITU) for the railroad line to be abandoned by MP. RTC submitted a statement indicating its willingness to assume full responsibility for management of, legal liability for, and payment of taxes on, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to restoration for rail purposes. On January 3, 1997, the Union Pacific Railroad Company (UP) agreed to the imposition of a trail use condition in this proceeding.<sup>2</sup>

The trail use request was made by the date required in the abandonment decision, and RTC has stated that it will assume financial responsibility for interim trail use/rail banking and has acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. Moreover, the carrier by its agreement to the imposition of trail use has indicated a willingness to enter into negotiations. Accordingly, a NITU will be issued under 49 CFR 1152.29. The parties may negotiate a trail use agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, further Board approval will not be necessary. If no agreement is reached within the 180 days, MP may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for rail purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon consideration, the decision served and published in the Federal Register on December 18, 1996, is modified to the

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<sup>1</sup> In the same decision, the Board also exempted discontinuance of service on the line. Texas Northeastern Division, Mid-Michigan Railroad, Inc.--Discontinuance of Service Exemption--In Red River and Bowie Counties, TX, STB Docket No. AB-364 (Sub-No. 3X).

<sup>2</sup> MP has recently merged with and into UP. In this decision, however, the abandoning railroad will continue to be referred to as MP.

extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the effective date of the exemption.

3. MP may discontinue service and salvage track and related materials consistent with interim trail use/rail banking after the effective date of this decision and NITU.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any taxes imposed on, the right-of-way.

5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.

6. If the user intends to terminate trail use, it must send the Board a copy of this decision and NITU and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by July 16, 1997, interim trail use may be implemented. If no agreement is reached by that date, MP may fully abandon the line.

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

## Exhibit C

SERVICE DATE – JULY 1, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-3 (Sub-No. 137X)

MISSOURI PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN RED RIVER AND BOWIE COUNTIES, TX

Decided: June 30, 2005

By decision served and published in the Federal Register on December 18, 1996 (61 FR 66748), the Missouri Pacific Railroad Company (MP)<sup>1</sup> was granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a line of railroad extending from milepost 23.0 at New Boston, in Bowie County, TX, to the end of the track at milepost 61.5 near Clarksville, in Red River County, TX, a distance of approximately 38.5 miles.<sup>2</sup> The exemption became effective on January 17, 1997. On December 30, 1996, Rails to Trails Conservancy (RTC) timely filed a request for issuance of a notice of interim trail use (NITU) and submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) and 49 CFR 1152.29. RTC also acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service. On January 3, 1997, UP agreed to the imposition of a trail use condition in this proceeding.

By decision and NITU served on February 14, 1997, a 180-day period was authorized for RTC to negotiate an interim trail use/rail banking agreement with MP for the right-of-way. In a letter filed on July 16, 1997, UP notified the Board that the right-of-way had been conveyed to RTC, effective July 3, 1997.

In a joint motion filed on June 15, 2005, RTC and Bowie County, TX (the County), request the substitution of the County as interim trail user for that portion of the right-of-way from milepost 23.0 to milepost 42.59 at the Red River County line, including all bridges and ballast, a distance of approximately 19.59 miles. RTC states that it intends to terminate its trail use along the corridor. UP consents to the substitution

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<sup>1</sup> MP merged with and into Union Pacific Railroad Company (UP). In this decision and notice, the abandoning railroad will be referred to as either MP or UP.

<sup>2</sup> In the same decision, the Board also exempted discontinuance of service on the line. See Texas Northeastern Division, Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Red River and Bowie Counties, TX, STB Docket No. AB-364 (Sub-No. 3X).

request. By facsimile received at the Board on June 30, 2005, RTC stated that it will remain the interim trail manager for the remainder of the line between milepost 42.59 and milepost 61.5.

Petitioners have submitted a copy of the extant NITU and a statement of willingness to assume financial responsibility by the new trail user. Petitioners' submission meets the requirements of 49 CFR 1152.29(f), and the requested relief will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on February 14, 1997, is vacated for that portion of the right-of-way from milepost 23.0 to milepost 42.59 at the Red River County line.
3. A replacement NITU applicable to Bowie County as interim trail user for that portion of the right-of-way is issued, effective on the service date of this decision and notice.
4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user continuing to meet the financial obligations for the right-of-way.
6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision and notice is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

## Exhibit D

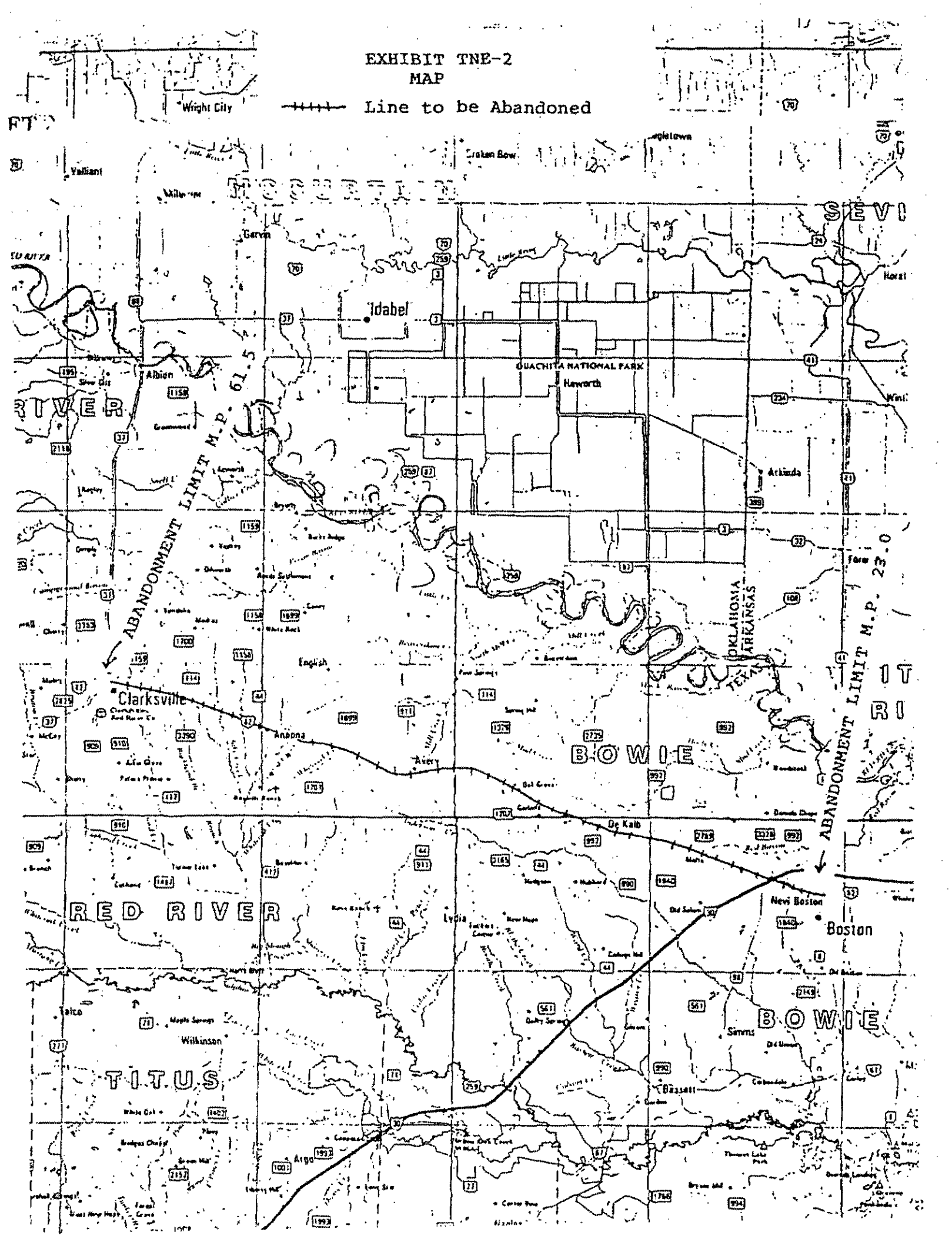


Missouri Pacific Railroad Company )  
 -- Abandonment Exemption -- ) Docket No. AB-3 (Sub-No. 137X)  
 in Red River and Bowie Counties, TX )  
 )

1. See Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX,  
Docket No. AB-3 (Sub-No 137X), served February 14, 1997.

EXHIBIT TNE-2  
MAP

----- Line to be Abandoned



BEFORE THE SURFACE TRANSPORTATION BOARD

Missouri Pacific Railroad Company	)
-- Abandonment Exemption --	) Docket No. AB-3 (Sub-No. 137X)
in Red River and Bowie Counties, TX	)
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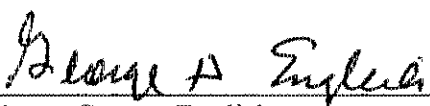
Statement of Willingness to Assume  
Financial Responsibility

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In order to establish interim trail use and rail banking under section 8(d) of the National Trails System Act, 16 U.S.C. ' 1247(d), and 49 C.F.R. ' 1152.29, the City of Annona, Texas is willing, to the extent permitted by law, to assume full responsibility for management of, for any legal liability arising out of the transfer or use of, and for the payment of any and all taxes that may be levied or assessed against the right-of-way in the above-captioned proceeding, formerly owned by Union Pacific Railroad Company (UP) and currently managed by the Rails-to-Trails Conservancy.

The property extends from Engineering Station 2587+20 to Engineering Station 2956+80) in Red River County, TX, a distance of approximately six (6) miles.<sup>1</sup> A map depicting the right-of-way is attached.

The City of Avery acknowledges that use of the right-of-way is subject to the user continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service. A copy of this statement is being served on UP and the Rails-to-Trails Conservancy on the same date it is being served on the Surface Transportation Board.

  
\_\_\_\_\_  
Mayor George English  
City of Annona  
101 Main Street  
Annona, TX 75550

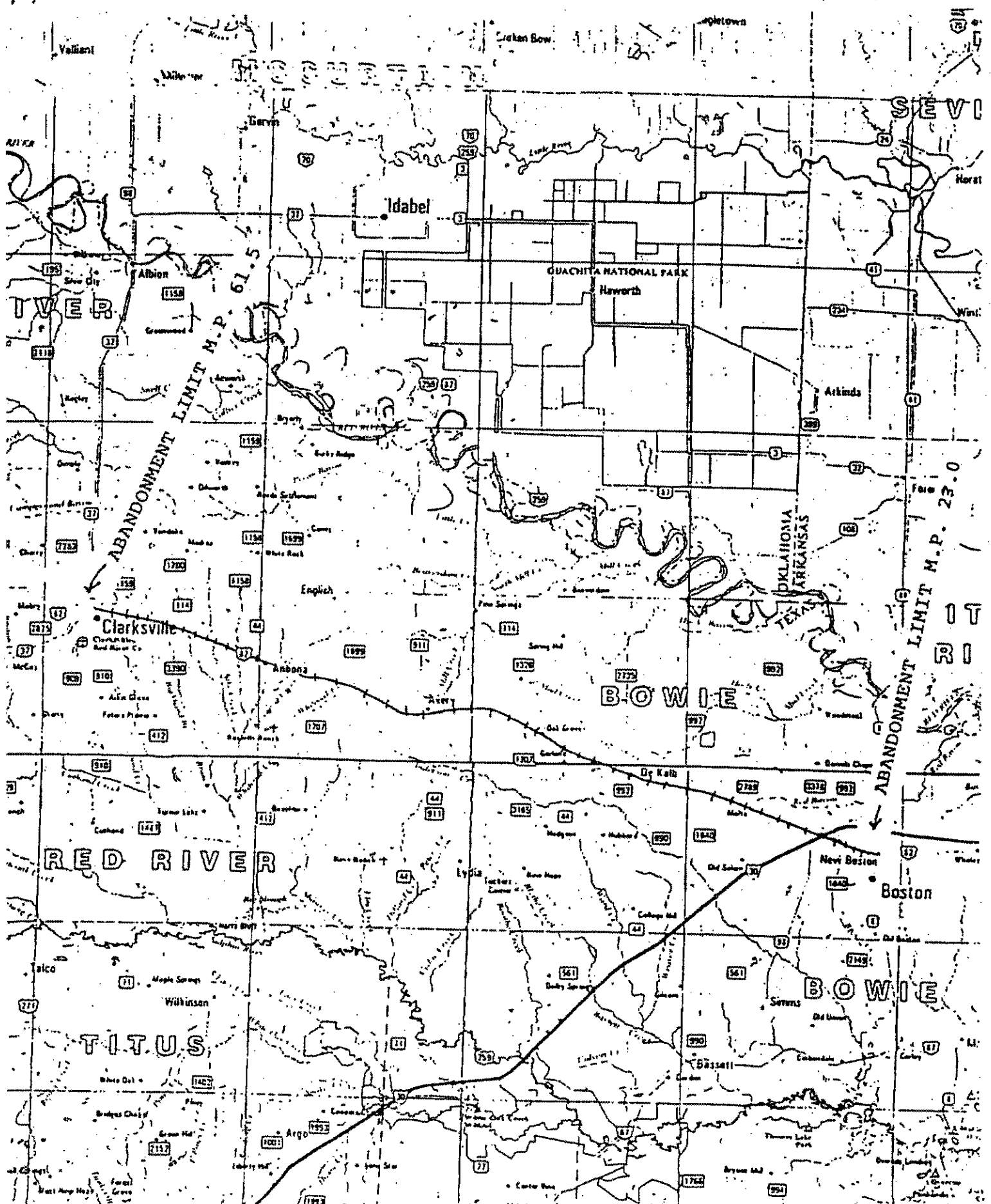
12-21-2006  
Date

on behalf of: the City of Annona, Texas

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<sup>1</sup> See Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX, Docket No. AB-3 (Sub-No 137X), served February 14, 1997.

Line to be Abandoned



Missouri Pacific Railroad Company )  
 -- Abandonment Exemption -- ) Docket No. AB-3 (Sub-No. 137X)  
 in Red River and Bowie Counties, TX )  
 \_\_\_\_\_ )

1 See Missouri Pacific Railroad Company -- Abandonment Exemption -- in Red River and Bowie Counties, TX,  
Docket No. AB-3 (Sub-No 137X), served February 14, 1997.

Line to be Abandoned

